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NO. 62946-8-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

RALPH REDMOND III,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE GREGORY CANOVA

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Evidence is sufficient to support a conviction if, when viewed in a light most favorable to the prosecution, any rational trier of fact could find the essential elements of the crime beyond a reasonable doubt. Here, the evidence established that the defendant intentionally assaulted his 12-year-old daughter by hitting her with a closed fist and kicking her repeatedly while she lay on the ground. Did the State produce sufficient evidence to support Redmond's conviction for Assault in the Fourth Degree—Child Abuse—Domestic Violence?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Defendant Ralph Redmond III was charged by Information with two counts of assault in the fourth degree—child abuse—domestic violence. CP 1-6. A jury trial on the first of those two counts began on January 13, 2009 before the Honorable Gregory Canova. 1RP 1.¹ The second count was not pursued at trial, and was ultimately dismissed because the only witnesses to that

¹ The Verbatim Report of Proceedings consists of two volumes, referred to in this brief as follows: 1RP (Jan. 13, 2009 and Jan 15, 2009); and 2RP (Jan. 30, 2009 and March 25, 2009).

incident refused to cooperate and the State elected not to have them arrested on a material witness warrant. CP 76; 2RP 175. On January 15, 2009, the jury returned a finding of guilt on count I, the charge that was pursued at trial. CP 24; 1RP 167.

2. SUBSTANTIVE FACTS

On May 8, 2008, Redmond went to the home of Helen Jones to pick up his three children and take them to computer class; Jones is the maternal grandmother of the children and frequently cared for them after school hours. 1RP 59, 62, 85. On his way there, he apparently tried contacting his daughter, then aged twelve, on her cell phone to let her know he was on his way. 1RP 86. His daughter, R.M., did not answer her phone. 1RP 90-91. When Redmond arrived, he came in the front door and yelled up the stairs, "[R.M.] get your ass down here." 1RP 43. When R.M. appeared, he yelled, "I've been calling you for mother fucking twenty minutes." 1RP 43. R.M. then proceeded down the stairs as directed, and Redmond responded by hitting R.M. in the head/face area with a closed fist. 1RP 43-44, 46, 53, 65. R.M. fell to the ground, at which point Redmond told her to get up; when she did, she was holding the side of her face as if in pain. 1RP 43, 66.

Redmond then hit R.M. once more with a closed fist, and when she again fell, Redmond began repeatedly kicking her in her side with his foot; he was wearing dress shoes at the time. 1RP 46-47, 66. The kicks were between moderate and hard and looked to R.M.'s grandmother and great-aunt, who were present in the room during the assault, as if they were causing pain. 1RP 50, 67. During the assault, R.M. looked scared, was wincing, and cried a bit. 1RP 47, 67. At that point, Jones intervened and asked Redmond to stop and tried to calm him down. 1RP 49, 68. R.M. then got up again, and was directed by Redmond to "go get her ass in the car." 1RP 48. As R.M. headed in that direction, the defendant hit her in the head once more, this time with an open hand. 1RP 48.

During the incident, no one contacted police, although R.M.'s great-aunt Linda Barron, thought they should. 1RP 49. However, the next day Barron went to the police station to make a report because she had been unable to sleep and was concerned by the "help me" expression on R.M.'s face during the assault. 1RP 51. Barron testified that she "believe[s] in giving your child a whooping, but to actually slap them like that and kick them, no." 1RP 50.

At trial, the defendant admitted to hitting his daughter on the day in question, but denied using a closed fist or ever kicking her.

1RP 97-100, 131. He claimed that after R.M. came down the stairs, he had raised his open hand with the intention of “popping” her in the head, but that R.M. ducked to the floor before he touched her. 1RP 97, 111. He went on to assert that the so-called physical discipline that followed was “spur of the moment” and was the result of the victim overreacting to him raising his hand. 1RP 111, 131. He claimed, nonetheless, that he acted appropriately within his parental rights. 1RP 135. However, Redmond also admitted at trial that to an onlooker, it may have looked like he overreacted and acknowledged having told the investigating detective that he acted inappropriately and that behavior like that needed to stop. 1RP 134-35.

C. ARGUMENT

1. THE STATE PRESENTED SUFFICIENT EVIDENCE TO SUPPORT REDMOND’S CONVICTION FOR ASSAULT IN THE FOURTH DEGREE—CHILD ABUSE—DOMESTIC VIOLENCE.

Redmond maintains that there was insufficient evidence to support his conviction for assault in the fourth degree—child abuse—domestic violence arguing that the State failed to prove that Redmond hit his daughter with immoderate or unreasonable

force. Redmond further argues that he had merely been using appropriate and lawful parental discipline on the date in question. Brief of Appellant at 5-11. His claim should be rejected as it is without merit. Redmond's conviction was predicated on evidence that, not only did Redmond hit his daughter twice with a closed fist, he also proceeded to kick her while she lay on the ground. Because those acts are presumed unreasonable under RCW 9A.16.100, there was sufficient evidence to support his conviction.

Evidence is sufficient if, taken in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. State v. Green, 94 Wn.2d 216, 220-22, 616 P.2d 628 (1980) (citing Jackson v. Virginia, 443 U.S. 307, 318, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979)). A claim of insufficiency of the evidence admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom. State v. Salinas, 119 Wn. 2d 192, 201, 829 P.2d 1068 (1992). Circumstantial evidence is considered equally as reliable as direct evidence. State v. Delmarter, 94 Wn. App. 634, 638, 618 P.2d 99 (1980). An appellate court must defer to the trier of fact on issues involving conflicting testimony, credibility of the

witnesses, and persuasiveness of the evidence. State v. Hernandez, 85 Wn. App. 672, 675, 935 P.2d 623 (1997).

In determining whether there is sufficient evidence, the reviewing court determines not "whether *it* believes the evidence at trial established guilt beyond a reasonable doubt," but whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Green, 94 Wn.2d at 221 (emphasis added); State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107, rev. denied, 141 Wn.2d 1023 (2000).

A person is guilty of assault in the fourth degree when he intentionally assaults another. RCW 9A.36.041. When the allegation is that a defendant assaulted his child, it is a defense to that charge that the force used was reasonable and moderate and was done for the purposes of restraining or correcting the child. RCW 9A.16.100; WPIC 17.07; see also State v. Russell, 69 Wn. App. 237, 247 n.4, 848 P.2d 743 (1993). However, under that same statute, when a defendant either kicks his child or strikes his child with a closed fist, a jury is entitled, though not required, to infer that the physical discipline was unreasonable. WPIC 17.07. Here, the evidence clearly established that the defendant did both.

First, Linda Barron testified that the defendant had struck R.M. on two separate occasions with a closed fist, both times with enough force to knock R.M. to the ground. 1RP 43-46, 53.² Jones, although unsure of the nature of the hits, testified that both were in R.M.'s face and were done with enough force to knock R.M. to the ground. 1RP 65-66. Second, both Barron and Jones testified that Redmond had repeatedly kicked R.M. after she fell to the ground the second time, and that the kicks were moderate to hard and appeared to cause pain. 1RP 46-47, 50-51, 66-67. That said, regardless of how they were classified in terms of strength, the kicks caused enough alarm to both women that Jones stepped in and told Redmond to stop and Barron decided to report the incident to the police the following day. 1RP 49, 51, 68.

In order to establish the elements of assault in the fourth degree beyond a reasonable doubt, the State need have proved an

² On appeal, Redmond claims that Barron recanted or abandoned this statement at trial and only testified that he had struck her with an open hand. Brief of Appellant at 5, 9. This is an inaccurate and incomplete recitation of the trial testimony, however. In reality, although Barron initially testified that she thought the first two hits inflicted by Redmond were done with an open hand, she admitted that her memory was faulty in that area and that her statements to the detective on May 13, 2008 and during a defense interview in October 2008 wherein she stated that the hits were accomplished with closed fists were more accurate. 1RP 46, 53. Further, Jones did not recant, abandon or change any previous statements in any way; rather, she simply stated, as she always had, that she was not sure if the hits were with an open hand or a closed fist, but that they were both done with enough force to knock R.M. to the ground. 1RP 65-66.

intentional assault by Redmond upon his daughter that did not qualify as reasonable and moderate discipline. For both of the acts described above (the closed-fist strikes and the kicks), the jury was entitled to presume them unreasonable, and therefore not lawful. CP 35 (WPIC 17.07). Moreover, even if the jury believed that the initial strikes to R.M. were done with an open hand as opposed to a closed fist, the jury was *still* entitled to conclude that, based upon the nature and force of the hits, they did not qualify as reasonable and moderate discipline. In the end, regardless of how the jury interpreted the evidence of the hits, it is clear that the jury ultimately concluded that RCW 9A.16.100 and WPIC 1707 did not rise to the level of a legitimate defense in this case, as demonstrated by their verdict of guilt that was returned in less than two hours. 1RP 165, 167. Because ample evidence, as described above, supported such a finding (particularly when viewed in the light most favorable to the State), there was no error and Redmond is not entitled to a reversal or dismissal of his conviction.

D. CONCLUSION

For all the foregoing reasons, the State asks this Court to affirm Redmond's conviction for assault in the fourth degree—child abuse—domestic violence.

DATED this 24th day of July, 2009.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. RALPH REDMOND III, Cause No. 62946-8-1, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

U Brame
Name
Done in Seattle, Washington

7/27/09
Date 7/27/09